



**DEFINING THE RULES ON THE PERIOD OF COVERAGE AND
RELEASE OF PERFORMANCE SECURITY FOR
INFRASTRUCTURE PROJECTS**

WHEREAS, Republic Act No. 9184 (R.A. 9184), otherwise known as “Government Procurement Reform Act” and its Implementing Rules and Regulations Part A (IRR-A) took effect on January 26, 2003 and October 8, 2003, respectively;

WHEREAS, pursuant to Section 39 of R.A. 9184, the winning bidder in a procurement process, prior to the signing of the contract, shall be required to post performance security in such form and amounts as specified in the Bidding Documents as a measure of guarantee for the faithful performance of and compliance with obligations under the contract;

WHEREAS, Section 39.4 of the IRR-A of R.A. 9184 provides that subject to the conditions of the contract, the Performance Security may be released by the procuring entity concerned, in the case of procurement of infrastructure projects, after the issuance of the Certificate of Completion of the contract, provided that there are no claims for labor and materials filed against the contractor or the surety company;

WHEREAS, Section 62.2.1 of the IRR-A prescribes a one-year defects liability period for infrastructure, from project completion up to final acceptance by the Government, during which the contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure projects on account of the use of materials of inferior quality within ninety (90) days from the time the head of the procuring entity has issued an order to undertake repair;

WHEREAS, Section 62.2.2 of said IRR-A provides that after final acceptance of the project by the Government, the contractor shall be held responsible for structural defects and/or failure of the completed project within 15 years for permanent structures, five years for semi-permanent structures, and 2 years for structures other than those earlier mentioned, from final acceptance, except those occasioned by *force majeure* and those caused by other parties;

WHEREAS, in the event performance security is released by the procuring entity after the issuance of the Certificate of Completion of the contract, there arises a situation where during the period from the time the Certificate of Completion is issued until the project is finally accepted by the Government, or otherwise during the defects liability period, no security is sufficient to guarantee the faithful performance of the contractor or from which liability may be drawn against in case of breach or default in performance;



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WHEREAS, under Section 39.4 of the IRR-A, by the permissive tenor of the provision, the procuring entity has the option to hold the release of the performance security even after the issuance of the Certificate of Completion of the contract;

NOW, THEREFORE, premises considered, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to adopt, as **WE** hereby adopt the following rule as to the release of performance security:

“In case of procurement of infrastructure projects, the performance security shall cover the period from the time of the signing of the contract until the final acceptance of the project by the government wherein the warranty period as prescribed in Sec. 62.2.2 of the IRR-A of RA 9184 shall have commenced. For this reason, the coverage of the performance security shall include the defects liability period of one (1) year and shall be due for release only after the Certificate of Acceptance is issued by the procuring entity.”

This resolution shall take effect immediately.

APPROVED this 30th day of June, 2005 at Pasig City, Philippines.

EMILIA T. BONCODIN
Secretary
Department of Budget and Management

ROMULO L. NERI
Director General
National Economic and Development
Authority

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

**DEPARTMENT OF NATIONAL
DEFENSE**

DEPARTMENT OF EDUCATION

DEPARTMENT OF HEALTH



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**DEPARTMENT OF INTERIOR AND
LOCAL GOVERNMENT**

DEPARTMENT OF ENERGY

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

DEPARTMENT OF FINANCE

**DEPARTMENT OF TRADE AND
INDUSTRY**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

PRIVATE SECTOR REPRESENTATIVE

Attested by:

JOSE MARTIN C. SYQUIA
Board Secretary, GPPB
Executive Director, GPPB-TSO

